

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5396 of 2003

For Approval and Signature:

HON'BLE MISS JUSTICE R.M. DOSHIT

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1. Whether Reporters of Local Papers may be allowed : YES  
to see the judgements?
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the concerned : NO  
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

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RUKNUDDIN B SHAIKH & Ors.

Versus

STATE OF GUJARAT & Ors.

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Appearance:

1. Special Civil Application No. 5396 of 2003  
MR NK MAJMUDAR for Petitioners  
MR HL JANI AGP for Respondent No. 1  
MR JAYESH BAROT for HS MUNSHAW for Respondent No. 2

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CORAM : HON'BLE MISS JUSTICE R.M.DOSHIT  
Date of decision: 17/08/2004

ORAL JUDGEMENT

Heard the learned advocates.

The petitioners are the Compounders appointed under the District Panchayat, Vadodara. The petitioners claim parity of pay with similarly situated compounders who possess higher qualification.

Rule 7 of the Gujarat Panchayat Service [Classification & Recruitment] Rules, 1967 provides for eligibility to various posts under the Panchayat. In connection with the post of Compounder, it is provided that-

[i] the appointment shall be made by direct recruitment from amongst the candidates;

(a) who are not more than 45 years of age;  
and

(b) who is a registered Pharmacist under the Pharmacy Act, 1948 provided that till such time as the registration is completed by whole of the State, candidates possessing registerable qualifications shall also be considered eligible for appointment.

NOTE The following are the registered qualifications as prescribed under section 31 of the Pharmacy Act, 1948. A person having attained the age of 18 years, residing in the Gujarat State, and

(a) holding a degree or diploma in Pharmacy or Pharmaceutical Chemistry or a Chemist and Druggist Diploma of an Indian University or a State Government, as the case may be, or a prescribed qualification granted by an authority outside India, or

(b) holding a degree of an Indian University other than a degree in Pharmacy or Pharmaceutical chemistry and has been engaged in the compound of drugs in hospital or a dispensary or other place in which drugs are regularly disbursed on prescriptions of medical practitioners of total period of not less than three years,

or

- (c) has passed an examination recognized as adequate by the State Government for compounders of dispensaries; or
- (d) has been engaged in the compounding of drugs in a hospital or dispensary or other place in which drugs are regularly disbursed on prescription of medical practitioners for a total period of not less than five years."

Since the year 1969, the State Government has provided two different payscales for qualified compounders and for unqualified compounders. Qualified compounders are, as explained in the Government Circular dated 23rd March, 1976, those who possess a diploma in pharmacy; registered with Pharmacy Council under the Pharmacy Act, 1948; the compounders who have passed the test examination and selected for the post of compounders. It is further provided that the candidates who have been appointed on the basis of the experience certificate from private or other factors, etc. are to be considered as unqualified compounders.

It is not disputed that the petitioners possess the qualification of SSC. They had been initially appointed on the basis of experience certificate produced by them. In other words, the petitioners do not possess the requisite qualification of a degree or diploma in Pharmacy nor have they passed the test examination conducted by the State Government. The petitioners have all along been treated as unqualified compounders and are paid the lower of the scales sanctioned for the post of Compounder. Two different scales for the cadre of Compounders on the basis of educational qualification has been provided by Revision of Pay Rules pursuant to the recommendation made by the concerned pay commission.

Learned advocate Mr. Majmudar has submitted that considering the relevant rules, reproduced hereinabove, the petitioners were eligible for appointment as Compounders. The petitioners were thus treated at par with or equivalent to the Compounders possessing a degree or a diploma in Pharmacy. The petitioners are, therefore, entitled to the same scale as that of the compounders in the higher pay scale.

Undoubtedly, the petitioners did possess the experience certificate which made them eligible for

appointment as compounder under the prevalent recruitment rules. However, it is well-settled that within the same cadre, different scales can legitimately be prescribed for persons having different qualifications. Such differentiation has been considered to be intelligible, rational and has been accepted as valid differentiation on the touch-stone of Article 14 of the Constitution of India. A reference can be had to the judgments of the Hon'ble Supreme Court in the matters of Mewa Ram Kanojia v. All India Institute of Medical Science & Ors. [AIR 1989 SC 1256] and of V. Markendeya & Ors. vs. State of Andhra Pradesh & Ors. [AIR 1989 SC 1308].

In the matter of Mewa Ram Kanojia [Supra], it was held that, "the Hearing Therapist and Audiologist both render professional services and there is qualitative difference between the two on the basis of educational qualification the principle of equal pay for equal work cannot be invoked or applied."

Similarly in the matter of V. Markendeya & Ors. [Supra], the Hon'ble Supreme Court up-held the prescription of different payscales for graduate Supervisors and Non-graduate Supervisors.

In the present case, it is admitted that the petitioners do not possess the professional qualification. They were appointed merely on the basis of experience certificate. They are not registered with the Pharmacy Council. The petitioners' claim for parity of pay with the Compounders who possess the professional qualification and who are registered with the Pharmacy Council is not sustainable. The petition is accordingly dismissed. Notice is discharged.

{Miss R.M Doshit, J.}

Prakash\*